

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-1110-05E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

2009 NOV 10 PM 4:26

OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY

Managed Risk Medical Insurance Board

AGENCY FILE NUMBER (if any)

ER-3-09

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) AIM Elimination of Duration al Residency Requirement	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	2699.200 and 2699.201
TITLE(S) 10	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Dianne Knox	TELEPHONE NUMBER (916) 324-0592	FAX NUMBER (Optional) (916) 445-0898	E-MAIL ADDRESS (Optional) dknox@mrmib.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Randi Turner</i>	DATE 11/10/09
TYPED NAME AND TITLE OF SIGNATORY Randi Turner, Chief, Human Resources and Program Services	

For use by Office of Administrative Law (OAL) only

STATE OF CALIFORNIA
MANAGED RISK MEDICAL INSURANCE BOARD
1000 G STREET, SUITE 450
SACRAMENTO, CA 95814

TITLE 10. INVESTMENT. CALIFORNIA CODE OF REGULATIONS
CHAPTER 5.6. ACCESS FOR INFANTS AND MOTHERS PROGRAM

AMEND SECTIONS 2699.200 AND 2699.201

ARTICLE 2. ELIGIBILITY, APPLICATION, AND ENROLLMENT

Text proposed to be added is displayed in underline type.
Text proposed to be deleted is displayed in ~~strikeout~~ type.

Section 2699.200 is amended to read:

2699.200. Basis of Eligibility.

- (a) All eligibility requirements contained herein shall be applied without regard to race, creed, color, sexual orientation, health status, national origin, occupation, or occupational history of the individual applying for the program.
- (b) To be eligible for the program, an individual shall meet the requirements of either (1) or (2):
 - (1) Meet all of the following requirements:
 - (A) Be certified as pregnant by a staff person authorized by the Planned Parenthood Organization or a licensed or certified healthcare professional, including, but not limited to a medical doctor, doctor of osteopathy, registered nurse physician's assistant, nurse midwife, vocational nurse, or medical assistant, and have a reasonable good faith belief that the pregnancy is not beyond the 30th week of gestation as of the application date; and
 - (B) Be a resident of the state of California ~~and have been a resident for at least six continuous months~~

~~immediately prior to the date of signing the application; and~~

- (C) Have a monthly household income after income deductions that is above 200 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level at the time of application; and
 - (D) Pay the first portion of the subscriber contribution, which shall be fifty dollars (\$50), and agree to the payment of the complete subscriber contribution; and
 - (E) Not be reimbursed by any health care provider or any state or local governmental entity for payment of the subscriber contribution and not have any health care provider or state or local governmental entity pay the subscriber contribution; and
 - (F) Not be a beneficiary of either no-cost Medi-Cal or Medicare Part A and Part B as of the application date; and
 - (G) Not be covered for maternity benefits in a private insurance arrangement as of the application date. A pregnant woman in a private insurance arrangement with a separate maternity only deductible or copayment greater than \$500 shall be deemed not covered for maternity benefits for purposes of determining eligibility.
- (2) Be an infant of less than two (2) years of age born to a program subscriber who was enrolled prior to July 1, 2004, and reside in California.

NOTE: Authority cited: Section 12696.05, Insurance Code. Reference: Sections 12696.05, 12698, 12698.05, and 12698.06, Insurance Code.

Section 2699.201 is amended to read:

2699.201. Application.

- (a) To apply for the program an individual shall submit:
 - (1) All information, documentation, and declarations necessary to determine program eligibility as set forth in subsection (d) of this section; and
 - (2) A cashier's check or money order for fifty dollars (\$50.00); and
 - (3) A statement signed by the applicant agreeing that if the pregnant woman is enrolled, the applicant will pay the full subscriber contribution and acknowledging that the program will take aggressive action to collect the full subscriber contribution.
- (b) The applicant shall sign and date a declaration stating that the information is true and accurate to the best of his or her knowledge.
- (c) The applicant will be notified in writing that the application is incomplete and what documentation is required for completion.
- (d)
 - (1) The application, entitled Access for Infants and Mothers (AIM) Application (rev 07.01.2006), which is incorporated by reference, shall contain the following:
 - (A) The pregnant woman's full name,
 - (B) The pregnant woman's current living address including house or building number (and unit number if applicable), street, city, county, state, and zip code, and phone number,
 - (C) The pregnant woman's date of birth,
 - (D) The pregnant woman's social security number (provision of the Social Security number is not mandatory),

- (E) The pregnant woman's ethnicity and primary language (not mandatory),
- (F) Certification by a staff person authorized by the Planned Parenthood Organization or a licensed or certified healthcare professional, including, but not limited to a medical doctor, doctor of osteopathy, registered nurse, physician's assistant, nurse midwife, vocational nurse, or medical assistant, that the woman on whose behalf the application is filed is pregnant,
- (G) The first day of the pregnant woman's last menstrual period,
- (H) A declaration that the pregnant woman is not, to the best of the applicant's knowledge, beyond the 30th week of gestation in a current pregnancy, as of the application date,
- (I) Information about whether the applicant or anyone in the household smokes,
- (J) The address to which the bills for the subscriber's contribution are to be sent, if different from the current living address,
- (K) The first and last name, and date of birth of the baby's father if living with the pregnant woman,
- (L) Information about whether the father of the baby is married to the pregnant woman,
- (M) A list of all family members living in the home, their ages, and relationship to the pregnant woman,
- (N) A list of those family members, and their social security numbers excluding dependent children, living in the home who had income in the previous or current calendar year, (provision of the social security number is not mandatory),

- (O) Documentation of the total monthly gross household income for either the previous or current calendar year. For each person listed in (N) above, provide documentation for each source of income. Such documentation shall be provided for the previous or current year as indicated below:
1. For the previous calendar year:
 - a. Federal tax return. If self-employed, a schedule C must be included.
 - b. All of the following that are applicable and that reflect the current benefit amount: copies of award letters, checks, bank statements, passbooks, or internal revenue service (IRS) 1099 forms showing the amount of Social Security, State Disability Insurance (SDI), Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, alimony, spousal support, pensions and retirement benefits, loans to meet personal needs, grants that cover living expenses, settlement benefits, rental income, gifts, lottery/bingo winnings, dividends, or interest income.
 2. For the current calendar year:
 - a. A letter from the person's current employer. The letter shall be dated and written on the employer's letterhead, and shall include the following:
 - i. The employee's name.
 - ii. The employer's business name, business address and phone number.

- iii. A statement of the person's current gross monthly income for a period ending within 45 days of the date the program receives the document.
 - iv. A statement that the information presented is true and correct to the best of the signer's knowledge.
 - v. A signature by someone authorized to sign such letters by the employer. The signer shall include his or her position name or job title and shall not be the person whose income is being disclosed.
- b. Paystub or unemployment stub showing gross income for a period ending within 45 days of the date the program receives the document.
- c. If self employed, a profit and loss statement for the most recent three (3) month period prior to the date the program receives the document. A profit and loss statement must include the following:
- i. Date.
 - ii. Name, address and telephone number of the business.
 - iii. Gross income, gross expenses, and net profit itemized on a monthly basis.
 - iv. A statement on the profit and loss, signed by the person who earned the income, which states,

“the information provided is true
and correct.”

- d. A letter or Notice of Action from the County Welfare Office issued within the last two (2) months that includes:
 - i. For each person for whom application is being made, a statement that the person is eligible for share-of-cost Medi-Cal,
 - ii. A determination of total monthly household income and monthly household income after income deductions as defined in Section 2699.100, and
 - iii. A determination of the number of family members living in the household.
 - e. All of the following that are applicable and that reflect the current benefit amount: copies of award letters, checks, or bank statements, or passbooks showing the amount of Social Security, State Disability Insurance (SDI), Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, alimony, spousal support, pensions and retirement benefits, loans to meet personal needs, grants that cover living expenses, settlement benefits, rental income, gifts, lottery/bingo winnings, dividends, or interest income for the previous month.
- (P) The name of each family member living in the home who pays court ordered child support or court ordered

alimony. The name and age of each person for whom payments are made for child care and/or disabled dependent care by a family member living in the home and the monthly amount paid. Documentation of alimony paid, child care and/or disabled dependent care expenses paid. Documentation includes copies of court orders, cancelled checks, receipts, statements from the District Attorney's Family Support Division or other equivalent document.

- (Q) A declaration that the pregnant woman is not a beneficiary of either no-cost Medi-Cal or Part A and Part B of Medicare,
- (R) A declaration that the pregnant woman ~~has been~~ is a resident of the State of California ~~for six (6)~~ continuous months immediately prior to the date of the signing of the application,
- (S) A declaration that the applicant will abide by the rules of participation, utilization review process, and dispute resolution process of any participating health plan in which the pregnant woman is enrolled,
- (T) Information about any health coverage that is in effect for the pregnant woman or will be in effect for the infant, including the name, address, and policy number of the current insurance or health plan,
- (U) A declaration that the pregnant woman is not, to the best of the applicant's knowledge, covered for maternity benefits in a private insurance arrangement. A pregnant woman with a separate, maternity only deductible or co-payment greater than \$500 shall be deemed not covered for maternity benefits for purposes of this declaration,
- (V) Name, address and phone number of the primary employer of each adult family member who is employed,

- (W) Information about health coverage available to the applicant, spouse, or father of the baby who is in the household,
 - (X) A declaration that the applicant has reviewed the benefits offered by the participating health plans,
 - (Y) A declaration that the applicant understands and will follow the rules and regulations of the program,
 - (Z) A declaration that the applicant is giving permission for the program to verify family income, health insurance, residence, and other circumstances,
 - (AA) A declaration that the subscriber is not being, and will not be, reimbursed by any health care provider or any state and local governmental entity for payment of the subscriber contribution and that no health care provider or state or local governmental entity is paying or will pay the subscriber contribution,
 - (BB) An indication of the pregnant woman's first choice and second choice participating health plans,
 - (CC) A declaration that the subscriber agrees to pay the required subscriber contribution, even if the subscriber does not take full advantage of the coverage or services.
 - (DD) A declaration that the information and documentation submitted is true and correct to the best of the applicant's knowledge.
- (2) The Social Security number and other personal information are needed for identification and administrative purposes.
 - (3) If applicable, the applicant's signed authorization to forward the application to the Medi-Cal Program in the county in which the applicant resides for a determination of eligibility for no-cost Medi-Cal.

NOTE: Authority cited: Section 12696.05, Insurance Code. Reference: Sections 12698 and 12698.05, Insurance Code.

FINDING OF EMERGENCY

Emergency Regulations Deleting the Access for Infants and Mothers Program Six Month Durational Residency Requirement

At its June 17, 2009 meeting, the Managed Risk Medical Insurance Board (MRMIB) found that an emergency exists and that the immediate adoption of the enclosed regulations is necessary to avoid serious harm to the public peace, health, safety, or general welfare. A copy of the Finding of Emergency adopted by the Board is attached.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

Access for Infants and Mothers (AIM) is a state- and federally-funded program administered by MRMIB. AIM provides comprehensive health insurance to lower-income women during pregnancy and for sixty days thereafter. (Insurance Code sections 12695 *et seq.*) In a recent case challenging the six-month residency requirement in the AIM program statute (Insurance Code section 12698(a)) and regulations (Title 10 CCR sections 2699.200(b)(1)(B) and 2699.201(d)(1)(R)), the San Francisco Superior Court issued a judgment and writ finding the six-month requirement unconstitutional and ordering that MRMIB cease enforcing and communicating the requirement. (Maternal and Child Health Access v. Managed Risk Medical Insurance Board, San Francisco Superior Court Case No. CPF-08-508296; Judgment filed January 30, 2009; Writ entered February 11, 2009.) MRMIB has complied fully with the court order and has ceased applying and communicating the six-month requirement in all AIM program operations and materials. The proposed emergency regulations delete all references to the invalidated requirement from the program regulations.

AUTHORITY AND REFERENCE CITATIONS

Authority: Insurance Code section 12696.05(h).

Reference: San Francisco Superior Court Case No. CPF-08-508296.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing Law: Insurance Code section 12698(a) states that, as a condition of eligibility for the AIM program, a woman must "[b]e a resident of the state for at least six continuous months prior to application." In order to implement this statute, MRMIB adopted Title 10 CCR section 2699.200(b)(1)(B) and 2699.201(d)(R). However, this statutory provision no longer is law as a result of the Superior Court order, described above, invalidating the six-month requirement. For the same reason, these regulations are now invalid. The

following program regulations are being amended to conform to the Superior Court order:

Article 2. Eligibility, Application, and Enrollment

Section 2699.200

Section 2699.200 explains the eligibility requirements an individual must meet to qualify for the AIM Program.

Section 2699.200(b)(1)(B) states that an individual must have been a resident of the state of California for at least six continuous months immediately prior to the date of applying for the AIM Program. MRMIB is amending this regulation to remove the reference to the six-month residency requirement by deleting the words "and have been a resident for at least six continuous months immediately prior to the date of the application."

Section 2699.201

Section 2699.201 explains what an individual is required to submit in order to apply for the AIM Program.

Section 2699.201(d)(1)(R) explains that the pregnant woman is required to declare she has been a resident of the state of California for six continuous months immediately prior to the date of applying for the AIM Program. This section is being amended to remove the reference to the six-month month residency requirement by deleting the words "has been" and "for six (6) continuous months immediately prior to the date of the signing of the application" and by adding the word "is," to explain that the pregnant woman must declare herself to be only a current resident of the state of California as of the application date.

The regulations affect the existing regulation text by conforming by deleting any reference to the six-month durational residency requirement consistent with the order in Superior Court Case No. CPF-08-508296.

Policy Statement: The objective of the proposed regulations amendments is to conform the wording of all applicable program regulations to the order in Superior Court Case No. CPF-08-508296.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY or REPORT

None.

DETERMINATIONS

The Proposed Substantial differentiation from existing comparable Federal Regulation or Statute: None

Mandates on Local Agencies or School Districts: None

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None

Non-discretionary Costs or Savings Imposed on Local Agencies: None

Costs or Savings to Any State Agency: None

Costs or Savings in Federal Funding to the State: None